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FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of
Implementation of
Sections of the Cable Television
Consumer Protection and
Competition Act of 1992

MM Docket No. 92-266

Rate Regulation

REPLY COMMENTS

Fidelity Cablevision, Inc. ("Fidelity"), by its attorneys and pursuant to the Commission's Notice in this proceeding,¹ respectfully submits its reply comments concerning certain issues regarding which the Commission requested comments.²

I. INTRODUCTION AND SUMMARY.

Fidelity is a small cable operator situated in Rolla, Missouri, with 5,600 subscribers. Fidelity's rates are below the benchmark level. Prior to rate regulation, Fidelity engaged in system upgrades that amounted to rebuilding the system. For various reasons, but primarily to avoid subjecting subscribers to

¹ In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 -- Rate Regulation, First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, MM Docket No. 92-266 (Aug. 27, 1993) ("Notice").

² Although Fidelity did not submit initial comments to the Notice last week, it is submitting reply comments at this time because the issues addressed herein were not adequately addressed by any of the initial comments that Fidelity examined. Fidelity believes that no party to this proceeding is prejudiced by these comments.

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immediately sharp rate increases, Fidelity did not raise its rates immediately to recover the costs of the upgrades, but rather anticipated a series of more gradual rate increases over time. In fact, Fidelity made a commitment to the local government franchising authority to do just that, that is, raise rates over time. Subsequent to Fidelity's commitment to raise rates only gradually, rate regulation was implemented. Thus, Fidelity's rates were not compensatory at the time of rate regulation.

Fidelity believes that, in circumstances such as those described above, a cable operator should be permitted to increase its rates up to benchmark levels without any cost of service showing, or, in the alternative, with a streamlined cost of service showing. Fidelity also believes that such circumstances warrant an extended period within which to increase rates to the benchmark.

II. CABLE OPERATORS BELOW THE BENCHMARK SHOULD BE PERMITTED TO INCREASE RATES TO THE BENCHMARK IF UPGRADES HAVE OCCURRED.

Fidelity believes that, in circumstances where cable operators initiated or completed system upgrades shortly before rate regulation was initiated and rates are below the benchmark, rates should be permitted to be increased up to the benchmark without any cost of service showing, or in the alternative, with a streamlined cost of service showing. Fidelity believes that it is appropriate to grant this relief in these unique circumstances, where significant upgrades have occurred, rates are below the benchmark and other compelling circumstances exist.³ Alternatively, Fidelity would recommend that a dollar amount per subscriber, such as \$100 over a twelve month period, be used as an objective standard for granting this relief.

This relief is necessary because the Commission originally assumed that all rates in effect at the time of the implementation of rate regulation were compensatory. This assumption was inaccurate, at least in the case of Fidelity. To correct this mistaken assumption, certain operators, such as Fidelity, should be permitted to increase their rates up to the benchmark level. This expedited procedure is necessary to create a level playing field so that, on a going forward basis, rates are compensatory.

In addition, operators such as Fidelity with rates below the benchmark have been dealt an unfair burden by rate regulation.

³ See Petition for Emergency Relief, filed by Fidelity on July 21, 1993 (copy attached).

Because of the rate freeze imposed by the Commission and the resulting delays in implementation of cost-of-service rules being in place, these operators have been unable to earn any return on upgrades since at least April 5, 1993. This regulatory lag of 224 days for cable operators who made investments in the infrastructure of their systems during a time of no regulation and now find themselves subject to regulation without recourse must be corrected now.

III. CABLE OPERATORS SHOULD BE ALLOWED PRICING FLEXIBILITY UP TO THE BENCHMARK OVER AN EXTENDED PERIOD OF TIME.

The Commission has also requested comments on the method of pricing that cable operators generally follow after a rebuild. As a preliminary matter, it is important that the Commission recognize that, unlike many other services that the Commission has been charged with regulating, cable service is not an essential utility service. This is evidenced by the relatively low penetration levels for basic cable service compared to telephone service. For example, currently, basic cable service penetration levels are 61.1% compared to telephone penetration levels of 93.8%.⁵ Elasticities of the services are very different as well. Thus, cable customers are subject to rate shock and rate increases often must be phased in.

Another reason cable operators may phase in rate

⁵ Source: Paul Kagan Associates, Inc. Data compiled from 100 largest MSOs as of 1/31/93

increases is because of a prior commitment with local government authorities. Although the Commission has exercised preemption over franchise agreements, there is still a moral and practical incentive to work with local authorities to maintain the spirit of those agreements in the new environment. By enforcing full cost-of-service filings the Commission may place local cable operators in the unenviable position of raising rates faster than previously agreed to and reneging on agreements with local government authorities, or in the alternative, making numerous and extremely expensive cost-of-service filings before two separate jurisdictions in order to avoid rate shock to its customers and live up to preexisting agreements with local franchising authorities.

For the above-mentioned reasons, Fidelity anticipates a phase in approach in order to avoid rate shock to its customers and avoid unwanted churn in customers. Fidelity anticipates a four- year period in order to meet traditional cost-of-service levels for rates. In situations such as Fidelity's, an expanded period of time to implement rates up to the benchmark is appropriate and fair.

IV. CONCLUSION.

Fidelity respectfully urges the Commission to adopt the approach suggested in these comments with regard to operators that are below benchmark levels.

Respectfully submitted,
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